

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0444
Sales and Withholding Tax
Responsible Officer
For the Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Withholding Tax-Responsible Officer Liability

Authority: Ind. Code § 6-2.5-9-3, Ind. Code § 6-3-4-8, Ind. Code § 6-8.1-5-1; Indiana Department of Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

Taxpayer was a shareholder in a corporation in which Taxpayer had owned an interest, which Taxpayer sold in 1998. However, sales and withholding taxes were not remitted to the Department for a period of several months, which resulted in an assessment against Taxpayer as a responsible officer of the corporation. Taxpayer protested the assessment.

I. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

The proposed sales tax and withholding tax liability was issued under authority of Ind. Code § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to Ind. Code § 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” Ind. Code § 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

Taxpayer has provided sufficient documentation to conclude that Taxpayer was not an officer or employee with the responsibility for holding and remitting the taxes in question.

Finding

Taxpayer’s protest is sustained.

JR/JM--051512